

St. John's Law Review

Volume 40
Number 1 *Volume 40, December 1965, Number 1*

Article 30

April 2013

CPLR 314(1): Expanding In Rem Bases

St. John's Law Review

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Recommended Citation

St. John's Law Review (1965) "CPLR 314(1): Expanding In Rem Bases," *St. John's Law Review*. Vol. 40 : No. 1 , Article 30.

Available at: <https://scholarship.law.stjohns.edu/lawreview/vol40/iss1/30>

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gestions those which will form one means "reasonably calculated"⁹⁹ to apprise the defendant of the pendency of the action.

CPLR 314(1): Expanding in rem bases.

In *Chittenden v. Chittenden*,¹⁰⁰ an action to have a Mexican divorce decree declared invalid, the supreme court held that service by publication could be made under CPLR 314(1)¹⁰¹ upon a non-resident who married the plaintiff's alleged husband following such decree.

The practitioner should note that the expanded concept of interest in the marital res found in the CPA¹⁰² has been carried over into the CPLR. Since the plaintiff was a New York resident, this state undoubtedly had jurisdiction over the res. The husband and the wife are usually the parties deemed to have an interest in the marital res. However, it is submitted that the holding in *Chittenden* is in accord with the liberal spirit of the CPLR,¹⁰³ and is realistic under the facts of the case. Since a declaration of the invalidity of the Mexican divorce decree would re-establish the validity of the first marriage, thereby rendering the second marriage invalid, the defendant does have a very real interest in the marital res.

CPLR 320(c): Amendment.

Prior to 1965, CPLR 320(c) provided that any appearance of a defendant served without the state under CPLR 314 conferred personal jurisdiction unless an objection to jurisdiction was asserted under CPLR 3211(a) at the time of appearance. As a result of the phrase "at the time of appearance," a conflict existed between CPLR 320(c) and CPLR 3211(e) since the latter offers the option of objecting by motion or answer irrespective of whether an appearance has been made. The legislature in 1965 deleted this phrase and the conflict no longer exists.

The result is that a defendant can serve a notice of appearance without fear that he thereby forfeits his jurisdictional objection. As long as he is able thereafter to make a CPLR 3211 motion, he may, in that latter motion, include his jurisdictional objection. However, the practitioner should be aware of the danger of waiving

⁹⁹ *Milliken v. Meyer*, 311 U.S. 457, 463 (1940).

¹⁰⁰ 46 Misc. 2d 347, 259 N.Y.S.2d 738 (Sup. Ct. Monroe County 1965).

¹⁰¹ "Service may be made without the state by any person authorized by section 313 in the same manner as service is made within the state:

1. in a matrimonial action"

¹⁰² CPA § 232.

¹⁰³ CPLR 104.